*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION NO.21910 OF 2005

%18-10-2005

# ANDHRA PRADESH IPS ASSOCIATION, HYDERABAD REPRESENTED BY ITS HONORARY SECRETARY V.DINESH REDDY, IPS

..PETITIONER

Vs.

$ GOVERNMENT OF ANDHRA PRADESH REPRESENTED BY ITS CHIEF SECRETARY AND OTHERS

..RESPONDENTS

!COUNSEL FOR PETITIONER: M/S.V.PATTABHI & C.VISHNU KUMAR

^ COUNSEL FOR RESPONDENTS 1 TO 3: THE ADVOCATE GENERAL

COUNSEL FOR RESPONDENT NO.4: CENTRAL GOVERNMENT STANDING COUNSEL

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. (2002) 4 SCC 638 = AIR 2002 SC 1598 (para 17)
2. 2003(4) ALT 68 (DB)

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION NO.21910 OF 2005

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18.10.2005

Between:

Andhra Pradesh IPS Association, Hyderabad, represented by

its Honorary Secretary, V.Dinesh Reddy, IPS

…Petitioner

AND

1. Government of Andhra Pradesh represented by its

Chief Secretary, Secretariat, Hyderabad

And others

…Respondents

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION NO.21910 OF 2005

**ORDER:**

Andhra Pradesh IPS Association, represented by its Hon.Secretary Sri V.Dinesh Reddy, IPS, former Commissioner of City Police, Hyderabad, filed the instant writ petition seeking a writ of Mandamus declaring orders of the Government in G.O.Ms.No.406, General Administration (Poll.A) Department, dated 02.09.2005, as arbitrary, illegal, irrational and violative of Article 14 of Constitution of India, and for a consequential direction that the Protocol Manual of the year 1996 issued by the Government of Andhra Pradesh be followed on all State Ceremonial Occasions and for such other orders as this Court may deem fit and proper. The petitioner has arrayed Government of Andhra Pradesh represented by its Chief Secretary, and Union of India in Ministry of Home Affairs represented by its Secretary to Government of India, New Delhi as respondents 1 and 2. Sri C.R.Biswal, IAS, Principal Secretary to Government in GAD (Political) Department is second respondent and Dr.Mohan Khanda, former Chief Secretary to Government of Andhra Pradesh is the third respondent.

At the outset, this Court must observe that the petitioner association of members belonging to coveted All India Service i.e., IPS, has made this Court a platform for highlighting its grudge against another coveted service i.e., Indian Administrative Service (IAS). There is a lurking suspicion in the mind of this Court whether the petitioner is really aggrieved by whatever it has impugned or is it the Secretary of the Association who deposed on its behalf who is bemoaning and

vindicating his heart burn. In this seemingly different kind of perennial War of Roses – it appears to be so. The highest constitutional Court in the State of Andhra Pradesh is required to adjudicate, pretty well thought of petty dispute of so called official Protocol brought before the Court. This has to be done without ignoring axiomatic principles of judicial review and limitations on such power. With this brief foreword as starting point, a brief narration of the events leading to filing of this writ petition may be noticed.

A lengthy extraordinary affidavit running into twenty-four pages and seventy-one paragraphs accompanies the writ petition invoking the special extraordinary jurisdiction of this Court. The controversy is about who should take precedence over whom in formal State Ceremonial Functions, what in administrative parlance is called Warrant Of Precedence (WoP)/Order Of Precedence (OoP). Whether Principal Secretary to Government in GAD (Political) should come first after Director General and Inspector General of Police (DGP) or Commissioner of Police, Hyderabad City, who is of the rank of Additional Director General of Police (Addl.DG)) should come after DGP above Principal Secretary? This is the core question. The impugned Government Order, which amends the existing WoP/OoP places, for the first time Addl.DG in Article 26 in WoP whereas the Principal Secretary remain included in Article 25 of WoP. A cursory analysis of lengthy affidavit would show that paragraphs 5 to 11 deal with protocol that was followed and the change made by the Government during the Republic Day Ceremony in January, 2005 and the visit of President of India in July, 2005; Paragraphs 12 to 15 speak about the efforts of Sri V.Dinesh Reddy, IPS, the then Commissioner of City Police in getting “lapse” rectified by respondents 2 and 3; Paragraphs 21 to 31 devote to the issue of the impugned Government Order and a criticism of the same, whereas paragraphs 32 to 44 read like self-assessment or appraisal reports of Sri V.Dinesh Reddy, IPS, as Commissioner of City Police; and Paragraphs 47 to 51 couched in vituperative tone are directed against the third respondent who is alleged to have indulged in demeaning and disrespecting the police set up in the State. The grounds in support of the writ petition with noticeable repetition are contained in paragraphs 52 to 62 of the affidavit. But as lucidly summarized by the learned counsel for the petitioner, grounds in support of the case are only three in number.

This Court, having perused the elaborate affidavit, is compelled to observe that most of the averments are irrelevant and not in good taste. Before summarizing the relevant factual matrix, this Court observes that when affidavits are filed accompanying the writ petitions as required under relevant Writ Proceedings Rules, 1977, persons approaching the Court for redressal must make out their grievance in sober language avoiding frivolous and vengenceful averments. No affidavit filed in this Court should appear vexatious to wreak out personal vendetta by somebody against somebody else. No one should forget that the Courts decide the disputes between persons and between the State and the citizen in a sober and sacred atmosphere. Averments, which are not in good taste, would certainly render the seriousness with which the issues are tackled in the Court casual, which no Court can afford to be, having regard to majesty.

In order to regulate the OoP in the formal and Ceremonial, Government functions,

the President's Secretariat in New Delhi, with the approval of the President of India published a Table with respect to the rank of Precedence of the persons named therein. The persons so named are with reference to the constitutional office they hold/occupy or civil posts to which they are appointed. To start with for the purpose of this case by notification No.33-Press/79 dated 06.07.1979 (hereafter called the Central OoP), the President's Secretariat notified the table of OoP. It consists of twenty six Articles. These Articles have various entries. The same was amended from time to time and communicated for general information to all the State Governments in India. Be that as it is, the State of Andhra Pradesh initially notified its own WoP–OoP in 1963 by G.O.Ms.No.497 dated 24.05.1963 and the same was being revised from time to time. After receiving the revised Central table of OoP, which was recorded and communicated by the Government of Andhra Pradesh in G.O.Ms.No.839, dated 22.11.1979, the Government of Andhra Pradesh issued G.O.Ms.No.384, dated 02.07.1988 duly reviewing the revised WoP-OoP of Andhra Pradesh. In the said Government Order, which refers to above events, it was also directed that the OoP shall be observed at all formal State and ceremonial functions, which are strictly formal in nature.

There are thirty one Articles in 'State revised OoP'. In this case, this Court is concerned with the OoP in relation to the posts of Principal Secretary (Political) to Government of Andhra Pradesh, Addl.DG/Commissioner of Police and the equivalent posts/ranks in the State Government and Central Government. Articles 25 and 26 deal with these posts except Addl.DG. Additional Secretaries to Government of India, DGP of Andhra Pradesh, Principal Secretaries to Government of Andhra Pradesh are included in Article 25 (though not in that order), whereas Inspector General of Police (as Head of the State Police) i.e., I.G.P (as Head), Joint Secretaries to Government of India are the posts which are included in Article 26 of State OoP. There is also no dispute that Chief Secretary to State Government is included in Article 23. As per Note II below the table of State OoP, "persons" in WoP will take rank in order of the number of the Articles and those included in the same Article will take precedence *inter se* according to date of entry into that Article. But as per Note 18, I.G.P. (as Head) in Article 26 will take Precedence above all others in that Article and as per Note 17, for the purpose of Article 26, the posts equivalent to the posts of Joint Secretaries to Government of India will have to be determined by Government of India in Ministry of Home Affairs.

Insofar as the Central OoP is concerned, the various posts/offices mentioned in various entries in Article 26 are only posts/offices concerning Central Government and posts and offices governed by the relevant State Rules are conspicuous by their absence in Central OoP. But the constitutional officeholders like Chief Ministers are also shown in Articles 7 (Chief Ministers), 8 (Chief Ministers), 14 (Chief Justices of High Courts), 17 (Chief Justices and Puisne Judges of High Courts), 20 (Puisne Judges of High courts) in Central OoP. All the State cadre posts are not shown in the central table of OoP though few of them find place. The reason is obvious. In all the ceremonies conducted by the Central Government wherever it be in India, the Central OoP has to be followed and wherever the State Government conducts ceremony or function, the State OoP has to be followed which invariably arranged

all offices and posts in the State Government in juxta position with higher or equivalent offices mentioned in the central table of OoP. It is also a fact that no law of Parliament or the State regulates the table of WoP-OoP and these are executive guidelines. It appears that all the State Governments adopted central OoP with necessary modifications so as to avoid any conflict between the two.

The Post of Commissioner of Police, Hyderabad (Commissioner of City Police, for brevity) is a statutory post under Hyderabad City Police Act, 1348-F. He is appointed and removed by the Government of Andhra Pradesh as per Section 5 of the said Act. At present, statedly, an IPS Officer of the rank of Addl.DG is being appointed as Commissioner of City Police. It is the case of petitioner that as and when State Ceremonial Functions are held, the Commissioner is being shown immediately after D.G.P. in the table of OoP for a given function. During the Republic Day Parade on 26.01.2004, Independence Day Parade on 15.08.2004, the Commissioner of City Police was shown above Principal Secretary to Government (Political) in GAD Department. However, during Republic Day Parade on 26.01.2005, the Principal Secretary to Government in GAD (Poll) Department was shown above the Commissioner of Police. This is grossly in breach of WoP-OoP. Sri V.Dinesh Reddy, who was the Commissioner protested against this before the third respondent, in vain. The third respondent addressed a letter dated 29.07.2005 informing Sri V.Dinesh Reddy, the then Commissioner of Police about the visit of President of India on 04.08.2005. It was also informed that the Chief Minister would introduce the Officers named therein and the Commissioner of Police was relegated to a position below Principal Secretary to Government in GAD (Poll) Department. Pointing out the alleged non-adherence to Protocol Manual, the deponent of the writ affidavit addressed a letter to Chief Secretary, Government of Andhra Pradesh, on 05.08.2005. The same describes grievance for redressal and is extracted herein below.

GOVERNMENT OF ANDHRA PRADESH

(POLICE DEPARTMENT)

From To

V.Dinesh Reddy, IPS The Chief Secretary,

Commissioner of Police, Government of A.P.,

HYDERABAD CITY. HYDERABAD.

(Through Director General of Police, A.P., Hyderabad)

No.CP-Camp/39/2005, dt.5-8-2005.

Sir,

Sub:- Visits – Visit of the H.E. President of India to Hyderabad from 4th to 5th August, 2005 – non-adherence to Protocol Manual – Reg.

Ref:- Letter No.721/Poll.A(2)/2005-27, dt.29-7-2005 of Principal Secretary to Govt. (Political) Genl. Admn. Dept. (Copy enclosed).

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With reference to the above, this is to submit that the list of officers to be introduced by the Hon'ble Chief Minister to H.E. the President of India near the Aircraft/Saloon is not as per the Protocol Manual of the Government of Andhra Pradesh. As per para 2 of Chapter III of the Protocol Manual, the Commissioner of Police is to be placed next to Director General of Police. The list conveyed by the Principal Secretary to Government (Political) vide reference above is in total contravention of the Protocol Manual. For instance, he kept Commissioner of Police below the Major General who is equated to I.G. of Police who is much below the Additional D.G.P. Even in Warrant of Precedence Major General figures in Article 26 and Additional D.G.P. figures in Article 25 and in between there are about 30 other posts.

The Commissioner of Police of the State Capital is an important functionary and his position assumes further significance when H.E. The President visits the State Capital. Keeping this in mind, he has been kept at 4th position in the list as per the Protocol Manual with a rider that he could be moved next to D.G.P. as per warrant of precedence. It is important to note that the manual does not even mention the seniority or rank of the Commissioner of Police as they become irrelevant in view of his functional significance, as C.P. can be of the rank of DIG/IGP/Addl. DGP/DGP. It is also not out of place to emphasize that even the rank of the present Commissioner of Police is that of the Addl. Director General of Police and he wears badges similar to that of the Director General of Police and Lt. General of the Army. Hence, even by applying the seniority or rank criteria hypothetically, his position cannot be shifted below the rank of Major General and in any case not to the 7th position as placed in the reference cited above.

When I pointed out this to Mr.C.R.Biswal, IAS., Principal Secretary to Government (Political), he did not take cognizance of my objection and gave his own illogical interpretations. Such casual and whimsical modifications of this list erode the sanctity of the Protocol Manual and cause avoidable embarrassment to all concerned. Further tinkering with the protocol and warrant of precedence by issuing such irregular orders would undermine the rank structure in the uniformed services and undermining rank structure is a serious impropriety.

I understand Mr.Biswal might not be well versed with rank structure. But instead of simply brushing aside my objection, he should have clarified with Chief Secretary or checked up with DGP/Principal Secretary (Home), who could have thrown light on these matters. In fact on an earlier occasion during the visit of Prime Minister, he issued an order placing C.P. in between DGP and himself but now he upgrades himself next to DGP.

It may be noted here that the norm to be taken as per warrant of precedence among the officers of equivalent rank or position is that when that officer is placed in that pay scale. In which case his position would be next to C.P.

I am not the person to get worked up on such trivial issues but the way he has behaved in spite of taking this to his notice perplexes me. Hence I am forced to bring this issue to your notice.

It is requested that the discrepancy in the letter under reference may be taken note of and the same may please be rectified for future.

Yours faithfully,

Sd/- x x x

Commissioner of Police

Hyderabad City

Encl: Xerox copy of

Chapter-III page 62 & 63

Of Protocol Manual

On 02.09.2005, the first respondent issued Memo No.469/SC.D/A2/2005-1, directing Sri V.Dinesh Reddy to furnish his explanation for using intemperate language in official communication and for violating directions of the Government with regard to line up at the reception and send off during the visit of President of India on 4-5th August, 2005. It was alleged therein that though the Commissioner of Police has been placed in accordance with the WoP in the line for reception and send off during the visit of President, Sri V.Dinesh Reddy has chosen to blatantly violate the Protocol by all means of official decency and decorum by taking of position in the line up before the Major General rank officers who are in Article 25 at the time of reception and by placing himself next to D.G.P. at the time of send off to President of India, which is not as per the order issued by the Government and hence conducted himself in a manner unbecoming on the part of the member of service. The petitioner sent his explanation vide letter dated 10.09.2005 addressed to the third respondent taking strong objection and informing that the Commissioner of Police is being wronged and that he will take the matter directly to Hon'ble Chief Minister. Sri V.Dinesh Reddy in his reply dated 10.09.2005 also made the following remarks.

What perplexes me the utmost is when serious issues especially those involving moral turpitude of senior officers which are highly detrimental to public interests are pending with you they are either buried or allowed to rot for months together for reasons best known while **as this petty issue regards to the protocol is being magnified to such an extent.** In fact this is such a trivial issue which could have been viewed dispassionately and as a senior most civil servant, in a big brotherly manner would have called for both of us, heard to us and advised accordingly. Instead you have chosen to mete out such shabby treatment to Commissioner of Police by serving such a memo which smacks of any official decency and decorum and which does

not befit communication from Chief Secretary to Commissioner of Police who is a senior and important functionary of the state administration like Chief Secretary. In fact this was served at the most inopportune time when as City Police Chief at this juncture is supervising one of the important and mega event of Ganesh festivities, the smooth passage of which is in fact the concern of every one of us, especially the Hon'ble Chief Minister and Hon'ble Home Minister are very much seriously seized of this event. As incharge of the civil administration I am sure one of the genuine concerns is to keep up the morale of the City Police Chief at this juncture and not to cause mental anguish. Such treatment was not meted out earlier even for grave irregularities committed in the past by my predecessors. It appears that I am being singled out for this raw deal from the C.S. level. If no less than Commissioner of Police himself is being wronged and such treatment is being meted out one can imagine the plight of others and common man for whose welfare we all exist. **We are the trustees of the people as per Gandhiji's philosophy and we cannot abrogate to ourselves such type of unbridled indiscretion in the name of Government.**

(emphasis supplied)

On 02.09.2005, on the day when the Government issued Memo to Sri V.Dinesh Reddy calling upon him to submit explanation for his alleged misconduct during the visit of President of India, the first respondent issued the impugned Government Order making following amendments.

In the Warrant of Precedence – Order of Precedence appended to the Notification issued in the said order,-

1. In article 24, in between the entries of "the officers of the rank of Lieutenant general or equivalent rank" and "Retired Chief Secretaries to Government", the entry "Special Chief Secretaries to Government" shall be inserted.

2. In article 26, the entry "Inspector General of Police (As Head of State Police)" shall be substituted with the entry "Additional Director General of Police".

3. In article 27, the entry Chief Conservator of Forests shall be replaced with the entry "Additional Principal Chief Conservator of Forests".

4. In article 28, for the entry "Additional Chief Conservator of Forests" the entry "Chief Conservators of Forests" shall be substituted.

In assailing the above Government Order and amendments, the learned counsel for the petitioner, Sri V.Pattabhi, made the following submissions. WoP-OoP is issued by the President's Sectretariat which is binding and mandatory on all the States. Though the State Government may modify the same depending on the specific needs and circumstances of the State, it is beyond the powers of the State Government to alter and amend central WoP-OoP and give precedence to officers in any manner they like. The impugned order is without power or authority and nonest. It is only the Union of India in Ministry of Home Affairs, which can bring out such

amendments. Secondly, as seen from the communication of Addl.DG of BSF, the post of Additional Director General in BSF, CRPF, ITBP and the posts of Additional Secretaries in Government of India are of the same rank. Therefore, the posts of Additional DGPs in the State of Andhra Pradesh, which is equivalent to the Additional Secretaries in Government of India are to be included in Article 25 and as a necessary corollary Addl.DG should be placed above Principal Secretaries to Government and below DGP. Inclusion of the Addl.DG in Article 26 after deleting the posts of IGP (as Head) is illegal and irrational. The Government of Andhra Pradesh have not applied their mind in issuing the impugned order. Lastly, it is contended that the impugned order is vitiated *mala fide* exercise of power by respondents 2 and 3 who acted detrimental to the interest of the then Commissioner of Police and Police set up by abuse of their power and authority. Till January, 2005, the Commissioner of Police was always placed in line up of officers to be introduced to the Governor immediately after the DGP but suddenly during the ceremonial parade on 26.01.2005, the second respondent changed the protocol to promote himself above the Commissioner of Police which is illegal.

The learned Advocate General, Sri C.V.Mohan Reddy, opposed the writ petition as not maintainable. He also submits that the posts of Special Chief Secretary to Government, Additional Director General of Police and Additional Principal Chief Conservator of Forests are cadre posts which were not included in the revised State OoP in G.O.Ms.No.384 dated 02.07.1988 and the impugned order was issued by making amendment so as to include these posts in the table of precedence. Secondly, he would urge that the Principal Secretary to Government is equivalent to the Additional Secretary to Government of India and therefore it was included in Article 25. Initially the posts of Addl.DGPs were not at all included in the table of precedence and therefore the Government ordered substitution of entry “IGP” (as Head) in Article 26 with Addl.DG. The post of IGP is no more existence after the creation of the post of DGP in 1988. In its place, the Government included Addl.DG (in Article 26) and having regard to the functions discharged by Principal Secretary to GAD (Political), the Government thought it fit to include Article 25, which is in accordance with Central OoP.

**The Question of Competence of the State**

In the constitutional scheme, the State executive power is vested in the Governor which is exercised with respect to such matters about which the legislature of the State has power to make laws. The power is exercised on the aid and advise of the Council of Ministers who are appointed on the advise of the Chief Minister. In the absence of any specific law, it is always within the power of the State to exercise the power by an executive order and mere absence of law made by State Legislature does not in any manner fetter the ‘executive power’ of the State. While exercising this power, though the same is expressed in the name of the Governor, decisions are taken by political executive i.e., Ministers and Chief Minister and the designated bureaucrats like Chief Secretary and other Secretaries to the Government in accordance with the Rules of business, promulgated by the Governor under article 166(3) of Constitution of India. The legislative powers of the Union and the State are distributed in List I (Union List), List II (State List) and List III (Concurrent List). As per

Article 246(3), the State Legislature has power to make laws for the State in respect of any matters enumerated in List II and subject to any law made by Parliament with respect to any of the matters enumerated in List III. It is no doubt true that "All India Services" like IAS, IPS., are included in entry 70 of Union List. But even in respect of All India Services belonging to the State cadre, by reason of entry 41 of State List, it is for the State Government to prescribe the WoP–OoP to be followed in formal State ceremonies. Members belonging to All India Services who are holding civil posts in connection with the affairs of the State also come within the purview of the State Government. It is therefore not possible to accept the contention that State cannot prescribe the OoP to be followed in formal functions.

As already noticed above, the Government of Andhra Pradesh was following its own table of precedence since 1963 which was being revised from time to time keeping in view the central OoP. The State's table of precedence was reviewed and orders were issued in G.O.Ms.No.384 dated 02.07.1988, which is now stands modified by reason of impugned order. This itself would show that the State Government modified its own table of precedence so as to not to be in conflict with the central table of precedence in formal ceremonial functions. If it were not so, many of the posts/offices would not find any place in the Central table of precedence because many State posts/offices are very conspicuous by their absence in the central OoP. The central table of precedence was not intended to be strictly binding on the State Government and this is made clear by the notification itself which is to the effect that the same is published for general information. Therefore, this Court does not find any merit in the submission of the learned counsel for the petitioner. It is well within the competence of the State Government to devise its own table of OoP keeping in view the importance of constitutional offices and posts both at the Central level and State level.

**The Question of Equivalence of Posts**

The submission of the learned counsel for the petitioner that the post of Addl.DG being equivalent to the post of Additional Secretary to Government of India, ought to have been included in entry 25 cannot be accepted. The reliance placed on letter dated 16.09.2005 of Additional Director General of BSF addressed to
Sri V.Dinesh Reddy, the then Commissioner of Police, cannot support the petitioner's contention. No clarification issued by the Central Government is placed before this Court to accept such contention. A reading of the communication from Additional Director General, BSF would shows that the same was issued pursuant to a telephone query made by Sri V.Dinesh Reddy on 16.09.2005 only. Further the said letter proceeds on the assumption that the Additional DGs in the Central Police Organisations like BSF, CRPF, CISF, ITBP, SSB and RPF are treated equal by the Government of India and they are invited to the other official functions as well as for 'At Home' at Rashtrapathi Bhavan. It also mentions that the Joint Secretaries to the Government of India are not invited to 'At Home. The inference drawn by Additional DG, BSF cannot help the petitioner's association. This Court has perused the report of the V Central Pay Commission, 1998. The said report at pages 1153-1160 (volume II) deals with Central Police Organisations like BSF, CISF, CRPF etc., The post of Addl.DG is placed immediately after post of DG and is characterized by the

Pay Commission as combatised gazetted posts whereas the post of Addl.DG in the State Police or in the city police is not a combatised gazetted post nor it is a para military post. It is not therefore possible to accept the contention that the post of Addl.DG in CPOs is equivalent to the post of Addl.DG in the State Police set up. This Court further hastens to add that it is a matter for expert Commission like Pay Commission and this Court is least equipped to equate two posts either based on pay parity or functional equality.

It is no doubt true that the post of Commissioner of City Police is, of late; filled up by a police officer of the rank of Addl.DG. It is also not denied that till January, 2005, the Commissioner of City Police was placed in the line up immediately after DGP and above Principal Secretary in GAD (Political). It is also not denied that the posts of Principal Secretary to Government and the post of Addl.DG carry the same scale of pay. But the basic distinction between these two posts is that the Principal Secretary to Government in GAD (Political) is entrusted by reason of delegation, with the Governmental functions at the Secretariat level including policy formulation whereas Addl.DG though may be acting independently in the sphere assigned to him cannot be treated as equal to Principal Secretary to Government. For instance, the Principal Secretary to Government in Home Department is a super time scale IPS officer. By no stretch of imagination, the post of Addl.DG can be equated to that of Principal Secretary in Home Department. Here again, pay parity does not indicate equality of status nor functional similarity. Again, these are the matters which are for expert body like Pay Commission to deal with. But on the basis of the material placed before this Court, the petitioner's contention that the post of Principal Secretary and the post of Addl.DG are equal cannot be accepted. Even if till recently they were accepted as equal as such and the post of Commissioner, having regard to its importance - is placed below DGP and above Principal Secretary; the same cannot be a ground to divest the State Government from amending its OoP in tune with the central table of OoP and bringing changes in State administrative set up. As rightly contended by the learned Advocate General, the post of Addl.Secretary to Government of India is equivalent to Principal Secretary to Government of A.P., whereas the Central Government order never treated the post of Addl.DG as equivalent to Addl.Secretary to Government of India. The petitioner association by reason of a practice that was adopted cannot find fault with the action taken by the State Government.

**The Question of *mala fide* exercise of power**

The submission that the impugned Government Order is vitiated by *mala fide* action is without any basis. As directed by this Court the relevant file has been placed before this court. A perusal of the same would show that requests from the Chairman of Public Service Commission, Hon'ble Lokayukta of the State regarding inclusion of Upa-Lokayukta in the OoP, request from Public Prosecutor, High Court of A.P., request from Member Secretary, A.P., Legal Services Authority have been pending before the Government of Andhra Pradesh from 2003 to 2005. While dealing with these requests, the Government also considered the question of including the posts

of Special Chief Secretary to Government, Addl.DG and Addl.PCCF in the WoP-OoP at appropriate Article. The file was processed and circulated to the Hon'ble Chief Minister who approved the proposal of GAD to include these three posts at appropriate place as a result of which the impugned G.O. was issued. By no stretch of imagination, one can assume that respondents 2 and 3 acted *mala fide* when the file was processed to consider requests of heads of various departments. There is no denial that the post of Special CS, Addl.DG and Addl.PCCF do not find place in the State table of OoP as these posts were created recently. Therefore, by impugned order they were included at appropriate level. A perusal of the file would certainly belie any submission that such inclusion is irrational. Very valid reasons are given for including these three posts at appropriate Articles in State OoP.

The petitioner sought to make out a case of *mala fide* action on the part of the third respondent by alleging that the third respondent failed to take disciplinary action against high ranking errant police officers and by issuing cadre clearance certificate to a senior police officer who was found to be guilty by CID. When the petitioner association had made such allegations against the third respondent, it is ununderstandable as to why the petitioner association kept all the while quiet till the retirement of the third respondent and now seeks to ventilate this aspect before this Court especially when such allegations are irrelevant for this case. No importance can be given to such allegations of *mala fide* action. As already noticed the decision to amend the State table of OoP was taken by the Government and by the concerned Minister in charge of GAD i.e., the Chief Minister. The file was processed at various levels in the hierarchy and therefore the allegations of *mala fide* exercise of power cannot be accepted. On a mere allegation of *mala fide* action, it is not necessary to invite affidavit from those against whom *mala fides* are attributed. That would be putting too much premium on wild allegations especially when the Government decision is taken in accordance with Rules of Business of Government of Andhra Pradesh.

**Question of Judicial Review and Justiciability**

Even if it is assumed - without accepting; that the post of Commissioner of City Police being of the rank of Addl.DG, which is allegedly equivalent to post of Additional Secretary to Government of India and therefore it should find place immediately after DGP and above Principal Secretary, this Court is rather surprised as to how such writ petition would be maintainable. Can this Court issue a Mandamus directing the Government of Andhra Pradesh to include the post of Commissioner of City Police over and above Principal Secretary to Government in GAD (Political)? Any person seeking Mandamus has to show some right, which has been violated. Such a right can be a fundamental right, a constitutional right, a statutory right or common law right. A writ petition for Mandamus can also be accepted to compel the public authority to discharge the public duty entrusted to such authority. If the petitioner fails to show either existing right or existing duty, Mandamus cannot issue from this Court.

In **Director of Settlements, A.P., v M.R.Appa Rao**, the Supreme Court observed as under.

> The expression 'for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Court must exercise the same with certain restraints and within some parameters. **One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus.** "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by statute or by the common law to do a particular act. **In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition.** (Kalyan Singh v. State of U. P., AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.
>
> (emphasis supplied)

What is the right of the petitioner or the incumbent of Office of the Commissioner of City Police (present Commissioner is not a party to this writ petition) that can be enforced in this writ petition. Note I of Central WoP-OoP as well as Note I of State OoP makes it very clear that the order in the table of precedence is meant for formal State and ceremonial occasions. It has no application in the day-to-day business of the Government and may not be strictly followed on more informal occasions. The same does not confer any right. Whether State table of OoP confers any right on any member of service holding the post under the State?

A Division Bench of this Court in **Government of A.P., v Suo motu writ petition** considered this question. In the said case, a learned single Judge *suo motu* entertained a writ petition on coming to know about Government Order in G.O.Ms.No.293 dated 02.07.2002 equating the Office of Lokayukta with the Office of the Chief Justice of this Court. While issuing notices to the Chief Secretary to Government, the learned Judge suspended the said G.O., aggrieved by which the Government of Andhra Pradesh preferred writ appeal before the Division Bench. The Division Bench heard the writ petition itself and set aside the order passed by the learned single Judge. Dealing with the table of precedence vis-à-vis its nature, the Division Bench observed as under.

> The Order of Precedence issued by the Government is purely an administrative measure to ensure that the said order is observed at all State and ceremonial functions, which are strictly formal in nature. **In our**

> **considered view, such Table of Precedence does not in any manner affect the legal status of any authority nor it denudes the authority.** In case the Act makes a provision for payment of salary to Lokayukta and Upa Lokayukta as that of Chief Justice and Judge of High Court of Andhra Pradesh respectively or that the allowances and pension, payable to and other conditions of service shall be similar as other conditions of service shall be similar as those of Chief Justice and Judge of High Court of Andhra Pradesh, **no fault can be found with the said Table of Precedence which only recognized the status of Lokayukta and Upa Lokayukta without denuding the status of the Office of Chief Justice of High Court of A.P. and Office of Judge of High Court of Andhra Pradesh.**
>
> (emphasis supplied)

By reason of the above Judgment of the Division Bench, it must be held that the State table of OoP does not confer any right on anybody nor affects legal status of any public servant. It is intended to be followed at all State and formal ceremonial functions. It does not confer any status nor take away the status of any person holding any public office. Therefore, this writ petition for issue of Mandamus cannot be entertained.

**Two other aspects**

The cause title of the writ petition apparently is AP IPS Association v Government of Andhra Pradesh. But actually and factually the writ petition is between Sri V.Dinesh Reddy and Government of Andhra Pradesh. A reading of affidavit in support of the writ petition, the documents in support of the writ petition would show that it is indeed Sri V.Dinesh Reddy, who is really aggrieved against the impugned order and alleged role played by respondents 2 and 3 in the issue of the impugned order. It is so obvious that any further reasoning would be superfluous.

Sri V.Dinesh Reddy as Commissioner of City Police never raised the issue of protocol/OoP before this Court or before the Government of Andhra Pradesh. After he was relieved of the said post, it appears, he chose to file the writ petition in the name of AP IPS Association. Therefore, the principle of *jus tertii* would apply to the case and if the Commissioner of City Police is allegedly wronged by placing him below Principal Secretary to Government in OoP, it is only the Commissioner of City Police who can seek redressal and not the AP IPS Association. This is also one of the reasons for not accepting the writ petition.

The second aspect is the way the prayer is made in the writ petition. The petitioner prayed for a writ of Mandamus declaring the impugned Government Order issued by the Office of the Chief Secretary to Government presided by the then Chief Secretary, third respondent herein as arbitrary and irrational. In the constitutional scheme, every executive action of the State and every order passed by the State shall have to be expressed in the name of the Governor and it is always deemed to be the order of the Government and not an order issued by the Chief Secretary or somebody else. By reason of the relevant Rules of business framed under Article

166(3) of Constitution of India, the order of the Governor or the order of the Government issued in the name of the Governor can be authenticated by any named officer of the rank of Deputy Secretary, Secretary, Principal Secretary/Chief Secretary to Government. It does not mean that a particular officer who authenticated the Government Order has issued the said Government Order. No Secretary to the Government on his/her own is competent to issue such Government Order but – if so authorised; is only competent to authenticate or attest the order of the Government issued in the name of the Governor in accordance with Rules of Business of Government. These are well settled and it is unfortunate that the petitioner association proceeds as if the impugned order is issued by the Chief Secretary to Government of Andhra Pradesh. Though various other unrelated issues are sought to be projected by the learned counsel for the petitioner, this Court is not inclined to deal with them because they are irrelevant and not germane for deciding the controversy in this case.

In the result, for the above reasons, the writ petition is not maintainable and is accordingly dismissed in *limini*.

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**(V.V.S.RAO,J)**

.10.2005

pln

Note: LR copy be marked.

(By order)

pln

To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO (for his Lordships kind perusal)

1 The Chief Secretary to Government, Government of Andhra Pradesh, Secretariat, Hyderabad.
2 C.R.Biswal, IPS, Principal Secretary to Government (Political) GAD, Government of Andhra Pradesh, Secretariat, Hyderabad.

3 Dr.Mohan Khanda, Former Chief Secretary, Government of Andhra Pradesh, Secretariat, Hyderabad.

4 The Secretary, Union of India, Ministry of Home Affairs, New Delhi. 5 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

7 Two CCs to the Advocate General, High Court of A.P.,

High Court Buildings, Hyderabad. (OUT)

8 The Secretary, A.P.Advocates Association Library, High Court

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9 8 LR copies.

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